

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT**

STATE OF TENNESSEE, ex rel.
ANNE B. POPE,

Petitioner,

v.

TENNESSEE COORDINATED
CARE NETWORK,
MEDICAL CARE MANAGEMENT
COMPANY,
ACCESS HEALTH SYSTEMS, INC.,

Respondents.

No: 01-3206-III

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**PETITION TO RECOVER PREFERENTIAL
AND FRAUDULENT TRANSFER
BY MEDICAL CARE MANAGEMENT COMPANY**

Petitioner Anne B. Pope, Commissioner of the Department of Commerce and Insurance for the State of Tennessee ("Commissioner"), and Special Deputy Liquidator Courtney Pearre petitions this Court, pursuant to Tenn. Code Ann. §§ 56-9-315 and 317, to void and order the return of preferential and fraudulent transfers of the assets of Tennessee Coordinated Care Network ("TCCN") to Medical Care Management Company ("MCMC"). In support of this Petition, the Commissioner and Special Deputy Liquidator state as follows:

**I. LIQUIDATOR'S POWER TO VOID PREFERENTIAL
AND FRAUDULENT TRANSFERS**

1. This petition is brought by the Commissioner, as the statutory liquidator of TCCN, and the Special Deputy Liquidator pursuant to the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101 *et seq.* (hereinafter the "Act");

2. On October 17, 2001 the Commissioner filed with this Court a "Verified Application for Ex Parte Seizure and for Orders Necessary to Seizure." This Court thereafter entered an Order of Seizure on October 18, 2001;

3. On November 2, 2001 this Court entered an Order placing TCCN in liquidation, following the filing of a "Verified Petition for Appointment of Receiver for Purposes of Liquidation and Injunction" on October 17, 2001;

4. The Act gives the Liquidator power to recover property of the insurer that is fraudulently transferred. Tennessee Code Annotated § 56-9-315 provides as follows:

(a)(1) Every transfer made or suffered and every obligation incurred by an insurer within one (1) year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors, if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors.

(2) A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be voided by the receiver, except as to a person who in good faith is a purchaser, lienor or obligee for a present fair equivalent value, and except that any purchaser, lienor or obligee, who in good faith has given a consideration less than fair for such transfer, lien or obligation, may retain the property, lien or obligation as security for repayment. . .

(d) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (a) shall be personally liable therefor and shall be bound to account to the liquidator.

Id.; and

5. The Act provides empowers the Liquidator to avoid preferences. Tennessee Code Annotated § 56-9-317 provides as follows:

(a) (1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one (1) year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. . .

(2) Any preference may be avoided by the liquidator if:

(A) The insurer was insolvent at the time of the transfer;

(B) The transfer was made within four (4) months before the filing of the petition;

(C) The creditor receiving it or to be benefited thereby or such creditor's agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not such person held such position, or any shareholder holding directly or indirectly more than five percent (5%) of any class of any equity security issued by the insurer, or any other person, firm, corporation, association or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who

has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, such purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by such purchaser or lienor. . .

...

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

...

(k) (1) Every officer, manager, employee, shareholder, member, subscriber, attorney or any other person acting on behalf of the insurer who knowingly participates in giving any preference, when such person has reasonable cause to believe the insurer is, or is about to become, insolvent at the time of the preference, is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to so believe if the transfer was made within four (4) months before the date of filing of the successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (a) is personally liable therefor and is bound to account to the liquidator.

Id.

II. FRAUDULENT TRANSFER

6. On October 16, 2001 approximately \$5.7 million was transferred upon instructions by MCMC from TCCN's account at AmSouth Bank, Nashville, Tennessee by wire transfer to the account of MCMC (hereinafter referred to as the "\$5.7 million transfer"). This transfer occurred without the prior approval of the Administrative Supervisor, Courtney N. Pearre. See Affidavit of Courtney N. Pearre, attached as Exhibit B to the "Motion for Temporary Restraining Order and/or Mandatory Injunctive Relief," filed October 17, 2001. On October 17, 2001 this Court entered a temporary restraining order and mandatory injunction pertaining to these funds. That Order was amended on October 18, 2001, but the "mandatory temporary injunction" remained in full force and effect;

7. The \$5.7 million transfer to MCMC, the organization that provided all administrative management services to TCCN prior to November 2, 2001, constitutes a fraudulent transfer pursuant to Tenn. Code Ann. § 56-9-315 because the transfer and/or alleged obligation for payment to MCMC was made and/or incurred without fair consideration;

8. The October 16, 2001 transfer of \$5.7 million to MCMC constitutes a fraudulent transfer pursuant to Tenn. Code Ann. § 56-9-315(a)(1) because the transfer of these assets by MCMC to its own account was made with intent to hinder, delay or defraud either existing or future creditors of an insolvent TCCN; and

9. The Commissioner and Special Deputy Liquidator hereby seek to void this fraudulent transfer, pursuant to Tenn. Code Ann. § 56-9-315(a)(2), and MCMC is liable and bound to account to the Liquidator, pursuant to Tenn. Code Ann. § 56-9-315(d).

III. PREFERENCE

10. MCMC, as the management company for TCCN, would be a general creditor only entitled to Class 5 creditor priority, pursuant to Tenn. Code Ann. § 56-9-330(a). Because the total amount of assets available to creditors in Class 5 is unknown at this time, it is unknown whether the \$5.7 million transfer may enable MCMC to receive a greater percentage of any disbursement of assets to all Class 5 creditors. The \$5.7 million transfer to MCMC therefore constitutes a preference as a transfer of property of TCCN for, or on account of, an alleged antecedent debt, with this transfer made just one day before the filing of a successful petition for liquidation;

11. On October 12, 2001 TCCN submitted a sworn filing to the State of Tennessee, which was prepared by employees of MCMC, stating that as of June 30, 2001, TCCN was insolvent and had a negative net worth of approximately \$53 million dollars. See “Final Order Appointing Commissioner for Purposes of Liquidation of Respondent [TCCN]; and Permanent Injunction,” entered November 2, 2001;

12. Pursuant to Tenn. Code Ann. § 56-9-317(a)(2), the Liquidator may avoid this preference for all of the following reasons:

(a) TCCN was insolvent at the time of the transfer. See Tenn. Code Ann. § 56-9-317(a)(2)(A);

(b) The transfer was made just one day before the filing of the successful liquidation petition. See Tenn. Code Ann. § 56-9-317(a)(2)(B);

(c) MCMC benefited by the transfer on October 16, 2001 when MCMC had reasonable cause, as the management company for TCCN, to believe that TCCN was insolvent or was about to become insolvent. See Tenn. Code Ann. § 56-9-317(a)(2)(C); Affidavit of Courtney N. Pearre, attached as Exhibit B to the “Motion for Temporary Restraining Order and/or Mandatory Injunctive Relief,” filed October 17, 2001, at Paragraph 4;

(d) Anthony J. Cebrun, as the “Authorized Representative” of TCCN who authorized the October 16, 2001 transfer through his control of MCMC, was in a position of influence comparable to an officer of TCCN. See Tenn. Code Ann. § 56-9-317(a)(2)(D); Affidavit of Courtney N. Pearre, attached as Exhibit B to, and Memoranda attached thereto from Anthony J. Cebrun to Rex Edmonds, authorizing transfer; and

(e) TCCN had only one employee, Albert Head. MCMC, through its control of the management of TCCN’s operations, did not deal with TCCN at arm’s length. See Tenn. Code Ann. § 56-9-317(a)(2)(D).

IV. PRAYER FOR RELIEF

WHEREFORE, premises considered, The Commissioner and Special Deputy Liquidator pray as follows:

- A. That MCMC be required to file a response to this Petition, and that a hearing date be scheduled as soon as possible for this Petition;
- B. That this Court enter an Order finding the \$5.7 million transfer to constitute both a fraudulent and preferential transfer;
- C. That this Court order the return of this \$5.7 million to TCCN; and
- D. For such other relief as is appropriate.

Respectfully submitted,

Paula A. Flowers

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been mailed, first-class, postage prepaid, on this 14th day of November, 2001, to the following:

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